CHAPTER 1
INTRODUCTION

Counterfeiting is the copying of a well-known trademark or manufacture of a product protected by copyright to suggest that a product is made by someone other than the actual manufacturer (Nurton 1996). Kay (1990) defined counterfeiting as the production of copies that are identically packaged, including trademarks and labelling, copied so as to seem to consumer the genuine article. On the other hand, piracy is the illegal copying of a product without necessarily suggesting that it has been made by someone else (Nurton 1996). In this study, counterfeiting and piracy are used interchangeably to refer to product counterfeiting.

Product Counterfeiting has become a serious problem for an ever-widening number of industries. According to the International Anti-counterfeiting Coalition, United States companies alone lose approximately $200 billion in sales annually as a result of counterfeiting (Freedman 1999). The International Chamber of Commerce forecasted that eight percent of all goods sold world-wide were fake.

The manufacture and sale of counterfeit product is undermining company and brand reputations, hitting profit, devaluing research and development costs and incurring legal fees (Nash 1989, David 1996). Counterfeiting also harm society at large. Job losses in United States due to counterfeiting have been estimated at $210,000 per year in autoparts industry alone (Levine and Rotenier 1993).

Counterfeiters no doubt have breached the Intellectual Property Rights (trademarks, patents and copyrights) of the legitimate producers. The International Intellectual Property Alliance’s (IIPA) released a report in 1997 on the estimation of piracy losses (the dollar value of lost sales of legitimate product due to copyright piracy) and piracy level (the estimated percentage of pirated
products in the audio-visual, recorded music, software and publishing markets) of approximately sixty countries (see Appendix A) (IIPA 1997).

The Business Software Alliance (BSA) released the findings of a recent software report on piracy, which showed that US$246 million is lost during a seven-day week, $1.4 million is lost hourly, $24,000 is lost each minute and $407 is lost every second due to unauthorised software copying (Taft 1994).

The fashion apparel industry also get whacked (Freedman 1999). Garments accounted for nearly ten percent of the value of all United States Customs counterfeit goods seizures in 1998, with another twenty one percent comprising purses, wallets and similar items. Companies such as Calvin Klein, Nike and Ann Taylor sink hundreds of millions of dollars into tracking and analysing fast-changing consumer tastes, designing hot products via CAD (computer aided design), creating state of art distribution systems and orchestrating slick advertising campaigns. But ultra low-tech counterfeiters turn all that against them by piggybacking on brand name recognition without sharing the costs. In Hong Kong for example, The Temple Street Market in Kowloon is crammed every evening with thousands of shoppers poring over $5 "Versace" shirts and $15 "Fendi" purses piled high in an endless row of stalls. Most are cheap imitations, but some fairly high quality fakes are also sold there (IIPA 1997).

The wide spread of Internet has further worsen the situation. More and more counterfeit operation are using the Web to go global cheaply, and that could expose the US and Western Europe to the sort of counterfeiting free-for-all that other parts of the world have been wrestling with for decades (Freedman 1999). Around 20,000 to 25,000 Web sites currently sell consumer luxury goods (Yoon 1998). Between ten and twenty percent of those sells counterfeit goods or at least misuse a manufacturer trademark. For example, Gucci fakes alone has nearly 200 sites.

A survey conducted by International Anti-counterfeiting Coalition cited that the share of fake designer sunglasses in US market is at about twenty five percent, designer watches at over twenty five percent and counterfeit designer
jeans comprise ten percent of the market (Grossman and Shapiro 1988). The most dramatic evidence of all concerned was the experience of Louis Vuitton in the Italian market. The manufacturer of designer handbags and luggage withdrew from the market entirely in the late 1970s when it found itself unable to compete with counterfeiters of its products (Grossman and Shapiro 1988).

United Kingdom’s Anti-counterfeiting Group revealed that European motor parts loss is estimated at $200 million, pharmaceutical companies’ annual losses are estimated at $50 million and the record industry losses out to the tune of $1 billion (Carty 1994).

According to recent surveys by CDL, a brand protection consulting firm, counterfeits of brand product are a threat to the share prices and profits of some of the world largest manufacturer of consumer goods (The Internal Auditor, 1998). Seventy two percent of the respondents indicated that they would avoid purchasing a company’s products if those products had a reputation for being counterfeited. More than forty percent of them said they see no point in buying designer labels since most people would think they were fakes. The risk of purchasing tainted goods that may have caused sickness or other ill effects also would drive away customers.

1.1 Overview on Counterfeiting in Malaysia
1.1.1 Laws and Regulations

The intellectual property system in Malaysia is made up of the following (Ministry of Domestic Trade and Consumer Affair 1999):

*Industrial Property consisting of:*

- Trademarks as governed by Trade Marks Act 1976 and the Regulations made thereunder;
- Patents as governed by Patent (Amendment) Act 1995 and the Regulation thereunder;
- Industrial designs as governed by the United Kingdom Designs (Protection) Act 1949 for Peninsular Malaysia, United Kingdom
Designs (Protection) Chapter 152 for Sabah and Designs (United Kingdom) Ordinance Chapter 59 for Sarawak.

Copyright

- Copyright as governed by the Copyright Act 1987, Copyright (Amendment) Act 1990 and the regulations made thereunder;
- Enforcement of the above intellectual property rights is provided for by the various intellectual property legislation and the Trade Description Act 1972. The Intellectual Property Division, Ministry of Domestic Trade and Consumer Affairs is responsible for all matters relating to intellectual property in Malaysia.

1.1.2 Counterfeiting in Malaysia

Numerous reports have singled out Asia for particular condemnation for counterfeiting. Malaysia, for instance, has been accused of being the counterfeiters' paradise (Globerman 1988). IIPA (1999) claimed that Malaysia had become one of the world's leading exporters of the pirated optical media products through Asia and increasingly to other market world-wide. The Star (1999) revealed that excluding Japan and India, Asia produced 4.1 billion pirated discs each year, with factories in Hong Kong, Taiwan, Thailand and Malaysia accounting for most of the amount. In contrast, demand in the region is only 0.5 billion discs annually.

Estimated trade losses due to piracy in Malaysia is presented in Table 1.1 Despite of the frequent raids against counterfeit products' retailers, distributors and even manufacturers, counterfeiting in this country seems no sign of decreasing. IIPA (1999) observed that Malaysian courts have failed to impose any deterrent penalties on counterfeiters. For example, there were up to ninety optical disc replication lines operating in Malaysia (including two mastering facilities), with an estimated annual production capacity of 315 million units. Although Malaysian government through tax incentives and other means has reduced it to only one such facility (Business Time, 1998), the authorities have yet failed to take adequate measures to ensure that these facilities operate in a
manner consistent with Malaysia's copyright laws. Deng, Townsend, Robert and Quesnel (1996) pointed out that Malaysia has a backlog of copyright cases before the courts, which has resulted in rights holders facing lengthy delays. Consequently, many cases are left unresolved and the deterrent effect of legislation is greatly diluted. Lim (1997) commented that the current Intellectual Property Right Protection is insufficient. As he said:

"...we can not use old laws or traditional legal concepts to deal with new technologies, as laws written for "atoms" and material things might not be applicable to "bits" or information that can be recorded and transferred on computers with the speed of light. (P.79)

### TABLE 1.1
MALAYSIA: ESTIMATED TRADE LOSS DUE TO PIRACY
AND LEVEL OF PIRACY IN 1998

<table>
<thead>
<tr>
<th>Industry</th>
<th>Loss (US million)</th>
<th>Level (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motion Pictures</td>
<td>40.0</td>
<td>80</td>
</tr>
<tr>
<td>Sound Recordings / Musical Composition</td>
<td>13.0</td>
<td>70</td>
</tr>
<tr>
<td>Computer Programmes: Entertainment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Software</td>
<td>135.2</td>
<td>99</td>
</tr>
<tr>
<td>Books</td>
<td>8.0</td>
<td>NA</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>196.2</strong></td>
<td><strong>NA</strong></td>
</tr>
</tbody>
</table>

Source: IIPA 1999

The impact of uncontrolled VCD piracy in Malaysia spreads well beyond the country's borders. The vast majority of the pirate VCD product that is so prevalent in Singapore originates from Malaysia. Malaysia is also the primary source of pirate VCDs in the Indonesia market. Pirated VCD products from Malaysia were also seized in Taiwan, India, South Africa, Canada, and United Kingdom and in other European countries as well (IIPA 1999). In short, VCD piracy originating from Malaysia is polluting markets all around the globe.
The recording industry has also felt the impact of rampant optical media piracy in the Malaysian market. The Recording Industry Association of Malaysia has estimated that legitimate sales plummeted fifty percent last year. The plethora of outlets for illegal copies of recordings has caused one-fifth of the legitimate music outlets to close (New Straits Times, 1998). EMI Sdn Bhd in March 1999 decided to withdraw its production of Chinese Songs from Malaysian market (Sin Chew Jit Poh, 1999). Malaysia has become one of the hubs of a world-wide audio piracy distribution system, with Malaysian produced pirates CDs seized last year in London, Brazil, Australia, and many other countries (Malay Mail, 1998).

The main piracy problem for the United States publishing industry in Malaysia is the widespread commercial cover to cover photocopying of university textbooks and other reading materials. The Association of American Publishers (AAP) estimates losses to US publishers due to piracy in Malaysia at $8 billion in 1998 (IIPA 1999).

There is virtually no market within Malaysia for legitimate copies of entertainment software for use on Play Station, Sega or PC platforms, nor for cartridge formats; the estimated piracy rate of ninety nine percent is unsurpassed in any other country (IIPA 1999).

Nevertheless, the Malaysian government is to be commended for its creative and sincere efforts in combating corporate end-user piracy in the country (IIPA 1999). Malaysia has clearly established criminal penalties for end-users who employ illegal copies of computer programs for commercial purposes. Enforcement Division of Domestic Trade and Consumer Affairs Ministry and the Royal Malaysian Police had worked in co-operation with Business Software Alliance (BSA) to curb end-user piracy. This had a considerable impact and resulted in increased sales of legal business software and a great-heightened awareness of legalisation issues among end-users. IIPA (1999) complimented that few government anywhere in the world have been more responsive than Malaysia to BSA concerns on end-user piracy. The Malaysian government's willingness to undertake a leading role in educational campaigns with the
industry is especially to be commended. Kotler (1996) also commended that infringements of intellectual rights in Malaysia are prevalent to a lesser degree than in many other Asian countries.

1.1.3 Impact of Counterfeiting to the Foreign Direct Investment

Not much report is available regarding the counterfeiting of products other than software/VCD/CD in Malaysia. It seems that the government and the private sectors are less concern on curbing those products or the pressure to react on it is much lesser compared to software/VCD/CD.

However, it is vital to highlight that the degree of Intellectual Property Right (IPR) protection in a host country is one of the important determinants for foreign direct investment (FDI) (Deng, Townsend, Robert and Quesnel, 1996). Table 1.2 indicates the country comparison with respect to IPR protection level. On the other hand, Figure 1.1 shows the comparison on country attractiveness in terms of IRP protection and rate of GDP growth.

**TABLE 1.2**

**COUNTRY COMPARISON ON INTELLECTUAL PROPERTY PROTECTION LEVEL**

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>STRENGTH OF IPR LEGISLATION</th>
<th>LEVEL OF ENFORCEMENT</th>
<th>OVERALL LEVEL OF PROTECTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>Weak</td>
<td>Very weak</td>
<td>Very weak</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Moderate</td>
<td>Moderate</td>
<td>Moderate</td>
</tr>
<tr>
<td>Korea</td>
<td>Moderate</td>
<td>Very Weak</td>
<td>Weak</td>
</tr>
<tr>
<td>Malaysia</td>
<td>Moderate to good</td>
<td>Moderate</td>
<td>Moderately good</td>
</tr>
<tr>
<td>Philippines</td>
<td>Moderate</td>
<td>Weak</td>
<td>Weak to moderate</td>
</tr>
<tr>
<td>Singapore</td>
<td>Good</td>
<td>Moderate</td>
<td>Moderately good</td>
</tr>
<tr>
<td>Taiwan</td>
<td>Moderate</td>
<td>Weak to moderate</td>
<td>Moderate</td>
</tr>
</tbody>
</table>

Source: Deng, Townsend, Robert and Quesnel (1996)
1.2 Nature of the Study

A number of studies claimed that developing countries such as Asian countries are flooded with counterfeit goods (Chan, Wong and Leung 1998; Joseph 1999; Islam and Karp 1993; Singhapakdi, Rawwas, Marta and Mohd 1999). Research on counterfeiting has focused on the supply side, for instance, ways of discouraging counterfeiting (Mc Donald and Robert 1994; Assaf, Stephen, Wright and Martin 1997; Checkett 1999). However, relatively little attention has been placed on demand side (Bloch, Bush and Campbell 1993; Cordell, Wongtada and Kieschnick 1996; Chow, Soo and Kim 1995; Cheng, Sims and Teegen 1997; Tom, Garibaldi, Zeng and Pilcher 1998).

Despite the supply side efforts to reduce counterfeiting, the practice endures. Supply will always exist when there is a demand. In order to curb counterfeiting effectively, one must first understand the consumer behaviour
towards counterfeiting. Hence, this study intends to get insight on questions such as "who buys?", "why and where do they buy?" and so on.

1.3 Objectives of the Study

The main objective of this study is to examine the consumer behaviour towards counterfeit purchases. In line with this, the specific objectives are:

a) to investigate the belief and attitude of consumers towards counterfeit goods
b) to explore the product attribute importance of some selected products
c) to study the consumer satisfaction with counterfeit goods
d) to identify individual traits in predicting a willingness to buy counterfeit goods
e) to examine the demographic profile of consumer.

1.4 Significance of the Study

This study will be of significant value to the producers of the legitimate products as it tries to investigate the general belief, attitude and behaviour of consumer towards counterfeit products. The findings of this study will help them in designing an effective program to eradicate counterfeiting.

Although a number of research concerning counterfeiting activities have been carried out in United States, it is important to note that this study is an investigation which is done in a local environment field setting.

The Malaysian government has been trying very hard to achieve the Vision 2020 – transform to an industrialised country by year 2020. In line with this, numerous efforts have been put in, such as incentives to attract Foreign Direct Investment, the concept of Multimedia Super Corridor and so on. However, in order to attract knowledge-based industry to step into this country, the government needs to review and tighten its laws concerning Intellectual Property Rights. It is hoped that the study will assist the policy regulators to
articulate a comprehensive protection on the legitimate producers and the consumers as well.

1.5 Scope of the Study

1.5.1 The Products

Nutron (1996) outlines top ten counterfeit goods in the market, namely: clothing, footwear, jewellery, perfume, pharmaceutical, recorded music, software, spare part, spirit and videocassette. In this study five different categories of products were chosen, they are clothing, computer software / VCDs / CDs, leather products, wallet / purses / hand bags and watches.

They were chosen because they are commonly available to the subjects in the study. In addition, these products give equal representation to counterfeit goods which are either functional in nature (clothing and software / VCDs / CDs) or possess greater fashion component (wallets / purses / handbags, leather products and watches).

1.5.2 The Subjects

The survey was carried out in Kuala Lumpur and Selangor where branded and counterfeit products were easily attainable by the consumers. The consumers also found to have a pattern of purchasing counterfeit products (Singhapakdi, Rawwas, Marta and Mohamad 1999). The subjects in the study were the students studying master degree in the local universities. Most of them were working executives in various fields in the Klang valley.

1.6 Organisation of the Study

The Study comprises of five chapters. Chapter One serves as an introduction to the study. It also illustrates the nature of the study, objectives of the study, scope and significance of the study. Chapter Two reviews some literature that have been carried out prior to this study. Chapter Three discusses the research methodology and limitations of the study. Chapter Four reveals the research results. Chapter Five concludes the study by summarising the findings.
and makes some recommendations to the producers. It also presents the recommendations for future research.